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No. 75-1142

In the Supreme Court of the United States

OCTOBER TERM, 1975

MARY MULLIGAN, an individual, et al.,

Petitioners,

vs.

GEORGE W. DUNNE, et al.,

Respondents.

MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

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SORG/CHICAGO U.S.A.

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Now comes the Illinois Liquor Control Commission through Michael R. Berz, its Chairman, and moves that this Honorable Court grant its Motion For Leave To File An Amicus Curiae Brief. This Motion is being submitted pursuant to Supreme Court Rule 42, Sections 1 and 3, upon Motion, because of the absence of consent of a party, George W. Dunne, Respondent.

I.

NATURE OF APPLICANT'S INTEREST

The Illinois Liquor Control Commission is the only agency in the State of Illinois which has the duties and powers pursuant to Chapter 43, Sections 94 et seq. Illinois Revised Statutes (1975) Dram Shop Act, to regulate and enforce the laws relating to the distribution of alcoholic beverages for the entire State.

Within the context of administering the laws relating to the distribution of alcoholic liquor, Secs. 120a, 158 and 159 which relate to taxation on the sales and distribution of alcoholic liquor, are incorporated by reference into the Dram Shop Act giving the Illinois Liquor Control Commission the powers and duties to hold administrative hearings in this area to aid the State Department of Revenue in collecting excise and retailers occupational taxes.

II.

FACTS AND QUESTIONS OF LAW THAT WILL NOT BE ADEQUATELY PRESENTED BY THE PARTIES

The Twenty-First Amendment to the Constitution of The United States

Neither the Illinois Supreme Court decision from which the Writ of Certiorari is taken, *Mary Mulligan, et al., Appellants* v. *George W. Dunne, et al., Appellees,* 61 Ill. 2d 544, 338 N.E.2d 6 (1975) nor the Petitioner's Petition for Writ of Certiorari deal in any effective manner with the impact upon the Twenty-First Amendment to the United States Constitution and the consequenting impact upon the State which the Illinois Supreme Court decision, supra, has.

The focal point of argument between the parties relating to the power of Cook County to adopt the ordinance in

question is an inquiry into whether or not the provisions for County Home Rule Powers found in Article VII, Section 6 of the 1970 Illinois Constitution gives Cook County this power. The Illinois Liquor Control Commission's position is that before an inquiry can be made into the State Constitution's provisions, that an analysis must first be made of the Twenty-first Amendment to the United States Constitution because this is the Source of State Power to regulate the liquor industry.

The State, pursuant to the Twenty-First Amendment of the United States Constitution, has the exclusive power to regulate all aspects of the liquor industry, including the incidence of taxation. *California* v. *LaRue,* 409 U.S. 109 (1972); *State Board* v. *Youngs Market Co.,* 299 U.S. 59 (1936).

The adoption of the Cook County liquor tax ordinance resulted in a disparity in taxation on liquor within the State of Illinois, since Cook County is the only county which has such a tax. This has induced retailers situated within Cook County who own other retail establishments outside of Cook County to transfer their products from the site outside of Cook County into Cook County to avoid the incidence of this tax, thereby violating Rule 25 promulgated by the Illinois Liquor Control Commission. The imposition of the Cook County tax has also induced both retailers and wholesalers to violate Section 126 of the Dram Shop Act—"Registration of trade marks, etc., sale within geographical area, delivery to authorized persons." This Section is intended, among other things, to aid the Illinois Liquor Control Commission in knowing the kind and quantities of alcoholic liquor authorized to be distributed by a wholesaler, in order to ensure competitiveness and an orderly collection of taxes. The inducement

to violate this Section by retailers purchasing from unauthorized wholesalers outside Cook County and wholesalers selling to retailers outside of Cook County is obvious.

Applicability of Fourteenth Amendment

The Fourteenth Amendment requires agencies of State Government to apply State laws consistently with applicability to all individuals similarly situated. *Shoot* v. *Illinois Liquor Control Commission,* 30 Ill. 2d 570 (1964).

Even though the Illinois Liquor Control Commission is not the agency which collects the Cook County tax, it is charged with the responsibility to cooperate with all subdivisions of this State—by exchanging data, participating in joint raids and forwarding licensing information with the Cook County Board.

In summary, it can be seen that the Applicant has a substantial interest in ensuring that the applicable provision of the United States Constitution which protects the State's interest be enforced.

CONCLUSION

Petitioners pray that this Court issue its Writ of Certiorari to the Supreme Court of Illinois to review the substantial federal questions raised herein.

Respectfully submitted,

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